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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,218	08/08/2003	Stan A. Sanders	03-079-J	3320

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EXAMINER	
CASTELLANO, STEPHEN J	
ART UNIT	**PAPER NUMBER**
3727	

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/637,218	SANDERS, STAN A.	
	Examiner	Art Unit	
	Stephen J. Castellano	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-77* is/are pending in the application.

4a) Of the above claim(s) *25-36,39-52 and 74-77* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24,37,38 and 55-68* is/are rejected.

7)☒ Claim(s) *53,54,69-73,76 and 77* is/are objected to.

8)☒ Claim(s) *1-77* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *8/8/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-24, 37, 38 and 53-73, drawn to a pressure vessel, classified in class 220, subclass 581.

II. Claims 25-36, 74 and 75, drawn to an apparatus for making, classified in class 100, subclass unknown.

III. Claims 39-52, 76 and 77, drawn to a method of making, classified in class 264, subclass unknown.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a materially different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case, the product can be made by hand without the feeding unit, extruder, cooling tank, power puller, dies, binder head, etc. of claim 25.

Inventions III and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be made by hand without the feeding unit, extruder, cooling tank, power puller, dies, binder head, etc. of claim 39.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. David Belasco on February 22, 2006 a provisional election was made with traverse to prosecute the invention of the pressure vessel, claims 1-24, 37, 38 and 53-73. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-36, 39-52 and 74-77 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 37, 38, 55-64, 66 and 68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 37 and 38 are indefinite because they depend from claim 36 a claim directed to the apparatus. Claim 36 is dependent from claim 25 also directed to the apparatus. Since claims 36 and 25 do not provide details of the pressure vessel, the metes and bounds of claims 37 and 38 can't be determined because the scope of the pressure vessel invention is not properly limited. Claims 37 and 38 will not be treated further on their merits since the scope of the claim can't be determined.

Claims 55-64, 66 and 68 are indefinite because they recite second to fifth pressure relief devices without being dependent on each other or a claim which recites a first pressure relief device.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-24 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-24 of prior U.S. Patent No. 6,796,453 to Sanders. This is a double patenting rejection.

The language of claims 1-24 of the ('453) patent are substantially identical to that of claims 1-24 of the present application. Claim 20 differs only in that the word "cylindrical" has been removed. "Conical" is believed to encompass cylindrical surfaces. Therefore, there is no difference between claim 20 of the ('453) patent and claim 20 of the present application.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

This rejection is made if it should be deemed that claim 20 of the ('453) patent is not identical to claim 20 of the present application.

Claims 20 and 21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,796,453 to Sanders. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is obvious to eliminate a cylindrical configuration when such is deemed not necessary and not critical due to the presence of other shape variations of similar construction such as conical which perform equally well.

Claim 65 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,796,453 to Sanders in view of Scanlon et al. (Scanlon).

Sanders discloses the invention except for the high-strength braiding material. Scanlon teaches high-strength braiding material wound about a passageway. It would have been obvious to add braiding to provide pressure load containment and additional resistance to fluid pressure.

Claim 67 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,796,453 to Sanders in view of Laing.

Sanders discloses the invention except for the hoop winding. Laing teaches a hoop winding about a passageway. It would have been obvious to add a hoop winding to provide pressure load containment and additional resistance to fluid pressure.

Claims 53, 54, 69-73, 76 and 77 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Even though claims 76 and 77 were withdrawn as directed to the method, these claims fall within a ***In re Ochai*** situation and will be allowed as long as claims 71 and 72, respectively, are allowable.

Claims 55-64, 66 and 68 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on Tu-F 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc